

REMARKS

Formal Matters

Claims 115-119 and 122-126 are pending.

Claims 120-121 have been canceled, without prejudice to the possibility of filing one or more continuing applications directed to the subject matter recited therein.

Claims 115-119 and 122-125 were examined. Claims 115-119 and 122-125 were rejected.

Applicants respectfully request reconsideration of the application in view of the made herein.

No new matter has been added.

The Telephone Interview

Applicants wish to extend their appreciation to the Examiner for the courtesy provided to Applicants' representative during the telephone interview of November 25, 2009. During the Interview, the Examiner indicated that the present application is in condition for allowance except for the rejection of claims 115-119 and 122-125 on the grounds of non-statutory obviousness-type double patenting over U.S. Patent Nos. 5,730,757 and 5,944,736. The Examiner indicated that the instant application would be allowed if terminal disclaimers were submitted for U.S. Patent Nos. 5,730,757 and 5,944,736.

This account is believed to be a complete and accurate summary of the interview as required by 37 C.F.R. § 1.133. If the Examiner believes that this summary is inaccurate or incomplete, Applicants respectfully request that the Examiner point out any deficiencies in his next communication so that Applicants can amend or supplement the interview summary.

Claims Rejected On the Ground of Nonstatutory Obviousness-Type Double Patenting Over U.S. Patent No. 5,730,757

In the Official Action of August 18, 2009, claims 115-119 and 122-125 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 42-44 of U.S. Patent No. 5,730,757. The Examiner admitted that the conflicting claims are not identical, but

asserted that they are not patentably distinct from each other because the present invention and the patent both claim a method of retraction of two ribs both laterally and vertically to create a surgical space for a surgical procedure.

Although Applicants do not agree and do not acquiesce to this ground of rejection, as many features of the present claims are not recited or suggested in claims 42-44 of U.S. Patent No. 5,730,757, Applicants are nevertheless submitting a terminal disclaimer herewith to render this ground of rejection moot and to advance the prosecution of the instant application.

In view of the above remarks and the submission of the terminal disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-119 and 122-125 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 42-44 of U.S. Patent No. 5,730,757, as being moot.

Claims Rejected On the Ground of Nonstatutory Obviousness-Type Double Patenting Over U.S. Patent No. 5,944,736

Claims 115-119 and 122-125 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 84-85 of U.S. Patent No. 5,944,736. The Examiner admitted that the conflicting claims are not identical, but asserted that they are not patentably distinct from each other because the present invention and the patent both claim a method of retraction of two ribs both laterally and vertically to create a surgical space for a surgical procedure.

Although Applicants do not agree and do not acquiesce to this ground of rejection, as many features of the present claims are not recited or suggested in claims 84-85 of U.S. Patent No. 5,944,736, Applicants are nevertheless submitting a terminal disclaimer herewith to render this ground of rejection moot and to advance the prosecution of the instant application.

In view of the above remarks and the submission of the terminal disclaimer herewith, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 115-119 and 122-125 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 84-85 of U.S. Patent No. 5,944,736, as being moot.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-006CON3.

Respectfully submitted,
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